

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6286 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and Sd/-

MR.JUSTICE A.R.DAVE

Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

JAYANTIBHAI CHHABABHAI PATEL

Versus

INCOME-TAX OFFICER

Appearance:

MR RD PATHAK for Petitioner
MR RP BHATT for Respondent No. 1 & 2
MR SV RAJU for Respondent No. 3

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 02/11/98

ORAL JUDGEMENT

(Per: R.Balia, J.)

The petition has a chequered history, though the issue involved in the petition is now narrowed only to the relief relating to return of title deeds of the petitioner which is with respondent No.2. The facts necessary for the present purposes may be noticed. The petitioner was given advance facilities by respondent No.3 in January 1980 against pledge of 1015.116 kgs. of silver, out of which 995.029 kgs. of silver were lying in four lockers with respondent No.3. That silver was seized and attached in proceedings under Section 132 of the Income Tax Act, 1961 by the Income Tax authorities in pursuance of the search conducted in the business and residential premises of the petitioner on 29.1.1981. The search and seizure proceedings also took place in respect of other members of the petitioner's family. Pursuant to the search and seizure proceedings, Special Civil Application No.5852 to 5860 of 1983 were filed, of which the present petitioner has filed Special Civil Application No.5860 of 1983. During the course of hearing of those petitions, a settlement was arrived at between the petitioner, his relatives on the one side and the Income Tax authorities on the other on 26.3.1984 in pursuance of which keys of the lockers of New Bank of India and respondent No.3 where silver was lying as per the details furnished along with the compromise terms were handed over to the Income Tax authorities. In addition to this, the petitioner and his brothers had also agreed to deposit the documents of titles of the properties owned by the petitioner solely as well as jointly with his brothers as securities for payment of taxes which have become due in respect of assessment upto assessment year 1982-83. In pursuance of this settlement, those petitions were withdrawn. It appears that, initially, in terms of the settlement, the Income Tax authorities did not review the question of prohibitory order in respect of keys of the lockers referred to above nor did they decide on the question of waiver of interest by 26.5.1984. For due implementation of the settlement and claiming relief in consequence thereof, the present petition is filed. While issuing Rule on 12.2.1986, the court made an interim order directing sale of silver which was lying in four lockers referred to in the petition by 3rd respondent within a period of 15 days and to deposit the sale proceeds in the court with the Registrar in cash. That amount was to be deposited by the Registrar in a separate account with respondent No.3. However, the silver could not be sold even within two months. This necessitated making of Civil Application No.443 of 1986. Therefore, another order came to be passed on 23.4.1986 in Civil Application No.443 of 1986 and the bank was directed to sell the

silver within eight days. While making the interim order on 12.2.1986, the court had noticed that the petitioner was admittedly to pay about Rs.16 lakhs to the bank under the pledge and the bank's claim was more than Rs.20 lakhs in respect of other overdraft account. Respondents Nos.1 & 2 claimed approximately Rs.10 lakhs as due from the petitioner on that date as tax and Rs.30 lakhs as other claims. Thereafter, the silver has been sold and the amount has been deposited in this court and, as per the assertions made by the petitioner by way of amendment on 4.2.1995, in all Rs.40,74,588/- were realized by sale of the silver between 29.4.1986 and 30.4.1986, of which Rs.16,18,813/- were adjusted by the bank against its due against pledge account; Rs.14,15,530/- were recovered by respondent No.1 against different recoveries as per letter dated 3.7.1986 and the remaining amount of Rs.10,40,245/- was deposited in Fixed Deposit account of respondent No.3 in the name of Registrar of this court. This deposit along with interest amounting to Rs.11,28,666/- has also been recovered by respondent No.1 on 18.2.1992 through the Tax Recovery Officer. The statement of appropriation of this amount has also been filed at Annexure-13 through the amendment in 1995. Through this amendment, twofold reliefs have been claimed by the petitioner in this petition. Firstly, he has challenged the charge of interest amounting to Rs.8,52,474/- by respondent No.1 on tax dues and Rs.6,18,813/- by respondent No.3 while adjusting the amount as aforesaid. Secondly, for directing respondent No.2 to return the title deeds of the properties which were handed over to it under the settlement at Annexure-A1. No reply to this petition has been filed on behalf of respondents Nos.1 & 2.

2. When the matter came up for hearing today, Shri Pathak, learned Counsel for the petitioner, has urged that the dispute in respect of respondent No.3 has been settled out of court and, so far as his contentions against the Department is concerned, he confines his relief to return of titles of deeds only and does not press for computation of interest charged against him and appropriated out of the sale proceeds of silver. He further made a statement that tax demand for assessment year 1982-83 originally made has been subjected to further appeals and tax for 1982-83 has been paid in accordance with the final orders made in these proceedings.

3. In these circumstances, there is no justification for retaining the title deeds with respondent No.2 any more under the said settlement. The learned Counsel for

the Revenue, though no reply has been filed, has tentatively urged that some amount may be due from the petitioner on account of interest chargeable under Section 220 of the Income Tax Act. He also urged that there may be certain recoveries against the petitioner for assessment year subsequent to 1982-83 about which the learned Counsel is not aware.

4. In the aforesaid circumstances, it is apparent that so far as the question of realization of dues from silver was concerned, as a result of the proceedings which have been undertaken by the Department which took place in 1981, the matter has come to an end by disposal of the silver and the sale proceeds in entirety have been appropriated by the bank and the Department upto the last paise. In the circumstances, it is appropriate that respondent No.2 is directed to return the title deeds referred to in the settlement to the petitioner without prejudice to the power of the authorities of the Revenue Department to take recourse to recover dues outstanding from the petitioner and/or his brother and other relatives for whose dues the said properties were to stand as securities under the settlement independently for such dues upto 1982-83 only. If those properties are subjected to such recovery proceedings for dues after 1982-83 in accordance with law, they are free to take recourse to such proceedings subject to and without prejudice to any contentions that may be raised by the petitioner or the owners of the properties in respect thereof. Respondent No.2 shall return the titles to the petitioner within one month from today.

5. Petition is partly allowed. Rule is made absolute as aforesaid with no order as to costs.

(KMG Thilake)

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